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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,210	11/26/2003	Lisa Semeniuk	50709-4	1209
23971	7590	01/12/2005	EXAMINER	PATEL, NIHIL B
BENNETT JONES C/O MS ROSEANN CALDWELL 4500 BANKERS HALL EAST 855 - 2ND STREET, SW CALGARY, AB T2P 4K7 CANADA			ART UNIT	PAPER NUMBER
			3743	DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/707,210	SEMENIUK, LISA
	<b>Examiner</b>	<b>Art Unit</b>
	Nihir Patel	3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on November 22<sup>nd</sup>, 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-31 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION*****Response to Arguments***

Applicant's arguments with respect to claims 1 and 10 have been considered but are moot in view of the new ground(s) of rejection. The office action is made final since the amended claims 1 and 10 contain new subject matter that requires the examiner to perform a new search.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Norfleet US Patent No. 6,418,929. Referring to claim 1, Norfleet discloses an infant oxygen mask that comprises the steps of providing an oxygen mask 40 that further comprises an adaptor 56 for receiving oxygen supply tubing 58 (see figure 3), and securing the oxygen mask 40 over a respiratory outlet using a strap that engages the crown of the head with a crown member that is spaced above both ears of the head (see figure 3), and attaches to the oxygen mask via a single side strap on each side, that each extend along one side of the head between a junction on the crown member and an attachment point on the oxygen mask, along a path that is spaced in front of the year on that one side of the head (see figure3).

Referring to claim 2, Norfleet discloses an apparatus wherein the crown member comprises an upper crown strap 62 and a lower crown strap 64 (see figure 3).

Referring to claim 3, Norfleet discloses an apparatus wherein the strap comprises a resilient material (see column 4 lines 49-53).

Referring to claim 4, Norfleet discloses an apparatus wherein the strap comprises a resilient material (see column 4 lines 49-53).

Referring to claim 5, Norfleet discloses an apparatus wherein the resilient material is elastic material (see column 4 lines 49-53).

Referring to claim 6, Norfleet discloses an apparatus wherein the resilient material is elastic material (see column 4 lines 49-53).

Referring to claim 10, Norfleet discloses an apparatus that comprises the steps of providing an oxygen mask 40 that further comprises an adaptor 56 for receiving oxygen supply tubing 58, providing a strap that comprises a crown member that engages the crown of the head of the person at a selected distance above both ears of the person (see figure 3), and a single side strap on each side strap having a first end and a second end, the first end being attached to the crown member at a junction (see figure 3), connecting the second end of each side strap to one each of two attachment points of the oxygen mask (see figure 3), and using the strap to secure the oxygen mask over the respiratory outlet thereby causing each side strap to extend between the junction and the attachment point along a path that is spaced in front of each ear (see figure 3).

Referring to claim 11, Norfleet discloses an apparatus wherein the crown member comprises an upper crown strap 62 and a lower crown strap 64 (see figure 3).

Referring to claim 12, Norfleet discloses an apparatus wherein the strap comprises a resilient member (see column 4 lines 49-53).

Referring to 13, Norfleet discloses an apparatus wherein the strap comprises a resilient material (see column 4 lines 49-53).

Referring to claims 14 and 15, Norfleet discloses an apparatus wherein the resilient material is an elastic material (see column 4 lines 49-53).

Referring to claim 19, Norfleet discloses an apparatus that comprises an oxygen mask 40 having an attachment point on either side of the mask (see figure 3), and further comprising an adaptor 56 for receiving oxygen supply tube 58 (see figure 3), and a strap having a crown member engageable on the crown of the head of the person at a selected distance above both ears of the person, and a single side strap on each side, each side strap having a first end and a second end, each first end being attached to the crown member at opposed junctions (see figure 3), joined together by connecting each attachment point to the second end of one of the side straps, and characterized in that each side strap is spaced in front of an ear of the person when the mask and strap are in use (see figure 3).

Referring to claim 20, Norfleet discloses an apparatus wherein the crown member comprises an upper crown strap 62 and a lower crown strap 64 (see figure 3).

Referring to claims 21 and 22, Norfleet discloses an apparatus wherein the strap comprises a resilient material (see column 4 lines 9-53).

Referring to claims 23 and 24, Norfleet discloses an apparatus wherein the strap made of an elastic material (see column 4 lines 49-53).

Referring to claim 28, Norfleet discloses an apparatus that comprises an oxygen mask 40 having an attachment point on either side of the mask (see figure 3), and further comprising an adaptor 56 for receiving oxygen supply tubing 58 (see figure 3), and a strap with a crown member comprising an upper crown strap 62, a lower crown strap 64 and two opposed junctions (see figure 3); a single side strap extending from each junction (see figure 3) joined together by connecting each attachment to the second end of one of the side straps, and characterized in that the crown member engages the crown above the ear, and each side strap is spaced in front of an ear of the person, when the mask and strap are in use (see figure 3).

Referring to claim 30, Norfleet discloses an apparatus wherein the upper crown strap, the lower crown strap and the side straps comprise an elastic material (see column 4 lines 49-52 and figure 3).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 16, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norfleet US Patent No. 6,418,929 in view of Darrow US Patent No. 1,323,217. Referring to claims 7, 25, and 29, Norfleet discloses the applicant's invention as claimed with the exception of providing a transverse element that is connected at one end to the upper strap and connected at the other end to a lower crown strap.

Darrow discloses a ventilating mask that does provide transverse element that is connected at one end to the upper strap and connected at the other end to a lower crown strap (see figure 1). Therefore it would be obvious to modify Norfleet's invention by providing transverse element that is connected at one end to the upper strap and connected at the other end to a lower crown.

Claims 8, 9, 17, 18, 26, 27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norfleet US Patent No. 6,418,929 in view of Darrow US Patent No. 1,323,217 as applied to claims 7, 16, 25, and 29 above, and further in view of Cruickshank Patent No. GB 2 212 725 A. Referring to claims 8, 9, 17, 18, 26, 27, and 31, Norfleet and Darrow discloses the applicant's invention as claimed with the exception of providing transverse (crown strap) that comprises resilient (elastic) material. Cruickshank discloses a breathing apparatus that does provide transverse (crown strap) 3 (see figure 1) that comprises resilient (elastic) material. Therefore it would be obvious to modify Norfleet and Darrow inventions by providing transverse (crown strap) that comprises resilient (elastic) material in order to make it easier to put on and take off the mask.

### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (703) 306-3463. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (703) 308-0101.

NP

January 7<sup>th</sup>, 2005

Henry Bennett  
Supervisory Patent Examiner  
Group 3700